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FEDERAL ELECTION COMMISSION

Aaron Hedlund)
Columbia, MO 65201)
Complainant)
v.)
Patriots for America)
1220 Poquoson Avenue)
Poquoson, VA 23362)
and)
Adam McLain)
24 Church Road)
Poquoson VA 23362)
Respondents)

CELA

MUR 7064

ANSWER OF PATRIOTS FOR AMERICA AND ADAM MCLAIN, IN HIS CAPACITY AS TREASURER

This Firm represents Patriots for America ("P4A") and Adam McLain, in his capacity as Treasurer of P4A ("The Treasurer") (collectively, the "Respondents") in connection with the above matter and we thank you for the opportunity to present this correspondence to demonstrate that no further action should be taken by the Federal Election Commission (the "Commission") against them. This responds to the letter from the Commission directed to P4A and Mr. McLain in his capacity as Treasurer of P4A dated May 17, 2016. The Respondents specifically deny any allegations that they violated the Federal Election Campaign Act of 1971, as amended (the "Act"), and answers further and responds as follows.

- A. **Despite One Administrative Error Since Corrected, the Disclosures Were Correct and Complete**

1-707-444-1080

The Complaint should be dismissed insofar as it alleges reporting improprieties because, with the exception of one inconsequential administrative error which was subsequently corrected, the reports are all truthful and accurate. Through pure supposition, speculation and rumination about "curiosities," the complainant contends that P4A "must have" inaccurately reported its receipts and disbursements. Such is not the case.

P4A's 2015 year end report shows that it incurred debts and obligations in 2015 to Draper Sterling LLC, Adam McLain, and Semcasting, Inc. totaling \$86,224.00. That reporting was (and is) accurate. In 2015, P4A made no disbursements and received no contributions and its reporting in that regard was also accurate.

P4A's 2016 Q1 FEC Form 3X, *Report of Receipts and Disbursement*, accurately reflects the amount and source of all receipts of P4A. Specifically, the report (Schedule A) shows five receipts from Franklin and Lee during the first quarter totaling \$84,250. Due to an administrative mistake, however, the total amount was listed on the detailed summary at Line 17 (Other Federal Receipts) instead of Line 11(a) (Contributions). This simple administrative error forms the core of complainant's accusations against P4A. In other words, the complainant seeks to make a mountain out of a mole hill. P4A subsequently corrected the administrative mistake and filed a corrected form listing the \$84,250 on Line 11(a) instead of Line 17. The administrative error was completely inconsequential, as Schedule A truthfully and accurately identified the source, dates, purposes, and amounts of all funds received by P4A. There were no misrepresentations or omissions in the Report.

P4A's 2016 Q2 FEC Form 3X, *Report of Receipts and Disbursement*, which has been filed since the filing of the Complaint, reflects additional disbursements from and receipts by P4A. Specifically, the reports show additional receipts from Franklin and Lee and disbursements

to Draper Sterling LLC, Adam McLain, and Semcasting, Inc. to satisfy the outstanding debts and obligations to owed to those parties by P4A.

With the exception of one completely inconsequential administrative error which has since been corrected, P4A's FEC reports accurately reflect all receipts and disbursements. The Complaint sets forth no facts (as opposed to the complainant's conjecture) to demonstrate otherwise and should be dismissed.

B. There is Absolutely No Evidence that P4A Violated 52 U.S.C. 30122

The Complaint contains a spurious and completely unwarranted and unfounded allegation that the Respondents "may have" violated 52 U.S.C. §30122 by knowingly accepting a contribution made by one person in the name of another. This part of the Complaint should be stricken and dismissed outright because it is not supported by *any* facts which come even close to describing a violation of the Act. 11 C.F.R. § 111.4 *requires* that a Complaint contain "a clear and concise recitation of the facts which describe a violation of a statute or regulation" and be made on oath with supporting documentation. It is well-settled that the burden lies with the complainant to articulate and allege with specificity in the Complaint facts sufficient to make out a violation of the Act before the Commission may find cause to proceed. E.g. Nader v. Fed. Election Comm'n, 823 F. Supp. 2d 53, 60 (D.D.C. 2011) (affirming dismissal of complaint in MUR 6021 where the complainant did not provide specific facts sufficient to demonstrate that each respondent "made expenditures in coordination with the Kerry-Edwards Campaign" even though the complaint contained 575 pages of circumstantial evidence and noting further that "it is not the FEC's burden to fill in the necessary blanks in Nader's complaint"). The Commission has stated further that "unwarranted legal conclusions from asserted facts or mere speculation will not be accepted as true," and "purely speculative charges" ... "do not form an adequate basis

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to find reason to believe that a violation of the FECA has occurred." Statement of Reasons, Federal Election Commission, MUR 4960 (Hillary Rodham Clinton for Senate Exploratory Committee, issued December 21, 2000). See, also, e.g. Factual and Legal Analysis, Federal Election Commission, MUR 6171/6172 (Cooney for Congress Committee) (dismissing complaint because "[w]ithout context or any other specific facts, this allegation is merely speculative and does not provide a sufficient threshold to support reason to believe findings").

The complainant has fallen far short of meeting his burden. Here, the Complaint alleges "on information and belief" that "it appears to complainant" that Respondents "may have" violated §30122 because of the "mysterious" circumstances that Mr. McLain and Franklin and Lee share a common address and Franklin and Lee made contributions to P4A which covered certain expenses. This is precisely the type of "unwarranted legal conclusions from asserted facts or mere speculation" that cannot "form an adequate basis to find reason to believe that a violation of the [ACT] has occurred." E.g. Statement of Reasons, Federal Election Commission, MUR 4960 (Hillary Rodham Clinton for Senate Exploratory Committee, issued December 21, 2000). The complainant has not, nor could he, allege any facts showing that P4A knowingly accepted contributions that were made by one person on behalf of another. For that reason alone, the Complaint must be dismissed.¹

Indeed, there is no mysterious secret conspiracy here. Mr. McLean, a former Marine who served two tours in Afghanistan, founded Franklin and Lee upon his return to focus on "recruiting, educating, training and supporting leaders who believe in the traditional principles of individual accountability and fiscal responsibility." See <http://www.franklinandlee.org/>.

¹ If the Commission were to accept the allegation as demonstrating a violation of section 30122, then any super PAC which accepted funds from a non-profit would necessarily be guilty of violating section 30122, as the funds from the non-profit were received by the non-profit from other donors.

Franklin and Lee is a duly organized 501(c)(4) not for profit organization and that receives donations from a variety of sources and donors. Mr. McLean also helped found P4A, a federally registered independent expenditure only political committee formed to publicly advocate similar ideals in connection with state and federal elections. That Franklin and Lee and P4A share a mailing address or that Franklin and Lee contributed funds to P4A should not surprise anyone or lead anyone to the conclusion that there is some mysterious and secret conspiracy for P4A to use Franklin and Lee as a "shell corporation" to "conceal the true source" of its funding.

The Commission Should Dismiss the Allegations Concerning Draper and Lee

The final paragraph of the Complaint should be disregarded by the Commission because it fails to allege any facts showing that the Act may have been violated. The complainant, upon information and belief, states that "it further appears ... highly unusual" that a newly formed super PAC paid \$56,234.89 to a business consulting firm. The complainant, however, has no information whatsoever about the services which were rendered by that firm. Based on his inexplicable suspicion alone, the Complainant seeks that the Commission open an inquiry and conduct an investigation into what he believes may be some vague "potential violation" of the Act.

The law does not give the Commission broad investigative authority, however, and does not permit the Commission to conduct politically motivated fishing expeditions on behalf a complainant based solely upon the complainant's unsupported and irrational suspicions. To the contrary, in light of the constitutional concerns with protecting the fundamental rights of free political speech and assembly, the Commission's authority to engage in investigations or enforcement proceedings is strictly circumscribed. See Fed. Election Comm'n v. Machinists

Non-Partisan Political League, 655 F.2d 380, 387 (D.C. Cir. 1981) (cert. denied 454 U.S. 897 (1981)) (“This novel extension of the Commission’s investigative authority warrants extra-careful scrutiny from the court because the activities which the FEC normally investigates differ in terms of their constitutional significance from those which are of concern to other federal administrative agencies whose authority relates to the regulation of corporate, commercial, or labor activities. ... Thus the highly deferential attitude which courts usually apply to business related [regulatory investigations] has no place where political activity and association never before subject to bureaucratic scrutiny form the subject matter being investigated”). In contrast to other federal agencies, the courts have affirmed that the Commission does not have broad investigative authority but is rather strictly confined to conducting investigations where specifically authorized by the Commission’s governing statutes and regulations. Id. (unlike federal agencies such as the FTC, SEC, or the Administrator of the Department of Labor’s Wage and Hour Division which “are vested with broad duties to gather and compile information and to conduct periodic investigations,” the Commission “has no such roving statutory functions” and an investigation “may begin only if an individual first files a signed, sworn, notarized complaint” which complies with the regulatory mandates). The regulations do not permit an investigation to proceed unless the Complaint sets forth sufficient verified facts to establish a violation of the Act. The Complaint fails to meet this standard. As the Court of Appeals for the D.C. Circuit noted, “mere ‘official curiosity’ will not suffice as the basis for [Commission] investigations.” Id.

WHEREFORE, Patriots for American and Adam McLain, its Treasurer respectfully request that the Commission Dismiss the Complaint against them, and that no further action be taken.

Respectfully Submitted:

**Patriots for America and Adam McLain, its
Treasurer**

By their counsel:



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Dated: August 8, 2016